Center for Political Accountability Newsletter

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Also In This Issue

Founder's Column: Supreme Court Ruling, Aetna Controversy Underscore Need for Disclosure, Oversight

By Bruce Freed, CPA President

The Supreme Court, ruling in a Montana campaign finance case, reaffirmed *Citizens United* the week of June 25. This action underscored the need for full disclosure and effective board oversight of corporate political spending. A recent controversy involving Aetna highlights exactly why.

Aetna inadvertently disclosed to the National Association of Insurance Commissioners that it contributed more than $3.3 million in 2011 to

Strong 2012 Proxy Votes Build Momentum for Political Transparency

Shareholder resolutions for corporate political disclosure and accountability secured sustained, high support in the 2012 proxy season despite mounting new attacks from some quarters (see related newsletter article).

In a milestone, a resolution for political transparency and accountability at WellCare captured a majority of 52.66 percent of total shareholder votes cast for and against it. The vote marked the second consecutive year such a resolution gained a majority vote at a major publicly held company.

Shareholders registered their support for transparency by backing the Center for Political Accountability's model resolution at five other companies: Coventry Health Care Inc., 48.62 percent; Anadarko Petroleum Corp., 46.62 percent; Windstream Corp., 43.30 percent; CenturyLink Inc., 41.08 percent; and CVS Caremark Corp., 40.91 percent.

In another key measure of support, shareholders strengthened their support for disclosure solutions at 12 of 19 companies where the resolution was resubmitted from 2011. Overall, proxy votes available from 26 companies at press time showed 13 disclosure resolutions – or half – that received support exceeding 30 percent.

In response to this increasing shareholder support, some companies where resolutions were filed provided partial disclosure without engaging with the shareholder proponents. This move allowed them to avoid proxy advisors' recommendations to "vote for" the resolution and to dampen general shareholders' support.

Ten companies followed this tactic this proxy season, including Amazon, Sprint Nextel, Caterpillar, Allstate, JPMorgan & Chase, and Lorillard. Partial disclosure often doesn't include indirect spending through trade associations or c4 groups and/or itemization of contributions and

American Action Network, SNL Financial reported, and more than $4 million to the U.S. Chamber of Commerce. AAN is a Republican-leaning 501(c)(4) advocacy group that is not required by law to disclose its donors.

A watchdog group named Citizens for Responsibility and Ethics in Washington (CREW) spotlighted the disclosures and criticized Aetna, saying the insurance company "wants to get rid of its political opponents without being held accountable by its shareholders or customers for funding vicious attack ads."

Mark T. Bertolini, Aetna's chairman, CEO and president, responded in a letter to CREW, "We recently amended our NAIC filings to correct for an error indicating we had provided funds to the American Action Network and U.S. Chamber of Commerce for lobbying activities. …[W]e have provided funds to these organizations for educational activities."

The episode offers a vivid reminder in a post-*Citizens United* world about the potential risks of corporate political spending by companies' "outsourcing" their giving through such tax-exempt nonprofit organizations.

Karl Sandstrom, CPA counsel, and I warned of these risks in a recent article published by The Conference Board Review, entitled

recipients, making it difficult for shareholders to gauge inherent risks associated with such spending. However, it shows that companies recognize the need for disclosure and provides an opening to press for further disclosure.

"With anonymous political spending soaring in a presidential election year, both institutional and retail shareholders are casting high votes for political transparency," said Bruce Freed, CPA president. "They recognize and are responding to the heightened threat posed by secret political spending since Citizens United."

Freed said the votes showed continuing momentum for political disclosure and accountability resolutions, and that shareholders were "bullish" on the issue.

The proxy season votes told only half of the season's success story. Of 51 resolutions filed this year by shareholders working with CPA, 13 resulted in an agreement with a company.

The Amalgamated Bank and New York City Pension Funds' resolutions brought the two highest votes for disclosure, at WellCare and Coventry Health Care. For other disclosure votes exceeding 40 percent, the shareholder group sponsors were New York State Pension Funds, Anadarko; Communications Workers of America, Windstream; Trillium Asset Management, CenturyLink; and Green Century Capital Management, CVS Caremark.

For the 26 companies where shareholder votes were available, the average vote was 30.2 percent in favor of corporate political disclosure. CPA did not include in its calculations votes cast on resolutions at Aetna and WellPoint. These companies already had corporate political disclosure policies, and the 2012 resolutions dealt with disclosure of their special assessments to trade associations and of their dues for these groups.

Its Impact Rising, CPA Draws More Attacks

The Center for Political Accountability has come under a coordinated national attack from prominent defenders of secret corporate spending.

The latest attacks employ personal invective. As more American corporations have adopted political disclosure and accountability, these attacks are mounting. At the same time, the Center's reputation has steadily grown.

What the attacks fail to mention is the growing success of the CPA-led movement for corporate political disclosure and

"Dangerous Terrain:"

> **"When a company contributes to one of these outside groups, it cedes control over the use of its funds while remaining accountable to its customers, shareholders, and employees on how the money is eventually spent."**
>
> **"A contributor's own goals and intentions can be easily ignored. Lacking basic internal controls and external accountability, the groups spend as they please. And if that spending generates scandal—all too possible—a company giving money can find itself mired in controversy and, as a passive contributor, unable to control the narrative."**

The Supreme Court now has made clear that it will not revisit *Citizens United*. In our transformed political landscape after *Citizens United*, companies that "outsource" their political spending will face a "dangerous terrain." For proof, ask Aetna.

New York Investigation Launched

New York State General Eric Schneiderman has issued a subpoena to executives at a foundation affiliated with the U.S. Chamber of Commerce, the

board oversight. To date, 101 companies have voluntarily adopted disclosure and oversight of their political spending.

On May 30, a Wall Street Journal editorial lashed out at the Center. One day later, Kimberley A. Strassel renewed the attack in the Journal's "Potomac Watch" column. The salvos marked the fourth and fifth tirades against CPA published in the Journal's pages since November, all repeating similar narratives.

This month, James Copland of the Manhattan Institute sounded off against CPA in a Harvard Corporate Governance blog post, and also in a Bloomberg TV interview.

The disclosure foes, focusing on efforts to push for corporate political disclosure through proxy votes this season, have cherry-picked data and stacked numbers to distort the facts, and they have relied on fictitious arguments.

One of the most glaring omissions came from the Manhattan Institute's Copland when he tried to minimize the CPA's successes. He stated that "[n]o proposal related to political spending or participation has garnered 40% support at a Fortune 200 company in 2012."

Copland didn't mention 2011. That year, almost 47 percent of shareholders voted in support of disclosure at Halliburton Co., a Fortune 200 company. Halliburton entered into a pro-disclosure agreement before this year's proxy season.

The critics' reasoning was questioned by Mark Schmitt, a senior fellow at the Roosevelt Institute, in a recent New Republic commentary. He said the Wall Street Journal's editorial page has "launched a full-fled anti-disclosure campaign" echoing the thinking of Bradley A. Smith, a former Federal Election Commission member.

In a 2003 book, Smith warned, "[D]isclosure holds the danger of government retaliation for unpopular speech." Countered Schmitt, "That there's no evidence of such official harassment, and that it would be a huge scandal if it occurred … doesn't seem to have any effect on this imaginary argument."

Last year, Smith kicked off the attacks on CPA that have been delivered in the Wall Street Journal.

On June 7, the Journal published a letter to the editor written by Bruce Freed, CPA president. The letter responded to the latest criticisms published in the newspaper's pages.

"One hundred and one companies, including more than half

New York Times reported on June 26. The newspaper said an investigation was looking at donations to tax-exempt groups that are heavily involved in political campaigns.

The investigation was "the first significant one in years into the rapidly growing use of tax-exempt groups to move money into politics," the article said.

of the influential S&P 100, have adopted political transparency and accountability," Freed wrote. "Their action is a tribute to good corporate governance. It demonstrates that political disclosure is becoming a mainstream corporate practice, protecting the interests of companies and their shareholders."

Disclosure in the News

The Center for Political Accountability's successes were noted in a Motley Fool article entitled, "Shareholders Campaign for Transparency;" were cited by Bill Lockyer, California state treasurer, in a Mercury News column about disclosure and a Securities and Exchange Commission petition; and were mentioned in a Corporate Counsel article, "The Great Debate: Are companies spending on politics, and do their shareholders want details?"

Regarding mutual funds, the New York Times reported, "Once-Reticent Investors Join Shareholder Revolts." A Roll Call analysis by Eliza Newlin Carney was headlined, "Campaign Finance: The Nonprofit World's New Weapon." The Center for Public Integrity and the Center for Responsive Politics issued a joint study, "Nonprofits outspent super PACs in 2010, trend may continue/Secret donors underwrite attack ads."

Meanwhile the U.S. Chamber of Commerce, according to a Washington Post article, has "come under attack for refusing to disclose donors while funding ads against Democrats. In response to a recent court ruling, the group has said it will shift the focus of its advertising to maintain donor secrecy."